



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 24 2004

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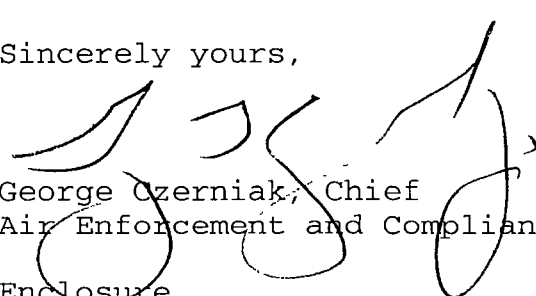
Degussa Engineered Carbons, L.P.  
c/o Corporation Service Company  
Registered Agent  
2711 Centerville Road Suite 400  
Wilmington, Delaware 19808

Re: Degussa Engineered Carbons, LP  
Administrative Penalty Order  
CAA Docket No. **CAA-05-2004 0044**

Enclosed herein is a Complaint and Notice of Opportunity for Hearing filed against Degussa Engineered Carbons, LP (Degussa) pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C § 7413(d). The Complaint alleges that Degussa violated Sections 110 and 502(a) of the Clean Air Act, 42 U.S.C §§ 7410 and 7661(a), and the regulations promulgated thereunder setting forth requirements in the Ohio Administrative Code Rules 3745-31 and 3745-77 for permitting of emission sources.

For additional information or clarification of any issue regarding this matter, you may contact John Tielsch, Associate Regional Counsel, U.S. Environmental Protection Agency (C-14J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353-7447.

Sincerely yours,

  
George Czerniak, Chief  
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. 1049  
Columbus, Ohio 43216-1049

Kay Gilmer, APC Supervisor  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138

William D. Hayes  
Vorys, Sater, Seymour and Pease LLP  
Suite 2000 Atrium Two  
221 E. Fourth Street  
Post Office Box 0235  
Cincinnati, Ohio 45201-0236

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No.	CAA-05- 2004 0044
	)		
Degussa Engineered Carbons,	)	Proceeding to Assess a	
LP	)	Civil Penalty under	
Belpre, Ohio,	)	Section 113(d) of the	
	)	Clean Air Act	
Respondent.	)	42 U.S.C. § 7413(d)	
	)		

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
CHICAGO, ILLINOIS

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Degussa Engineered Carbons, LP, (hereinafter "Degussa") a Delaware partnership doing business in Ohio, whose general partner is Degussa Engineered Carbons, LLC.

Statutory and Regulatory Background

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit a plan which provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emissions limitations, control measures, schedules for compliance, emissions monitoring requirements and permit programs for new and modified sources.

5. 40 C.F.R. § 52.23 provides that failure to comply with any approved regulatory provision of a State Implementation Plan (SIP) or with any permit limitation or condition contained within an operating permit issued under a U.S. EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

6. Pursuant to Section 110 of the Act, on October 31, 1980, U.S. EPA approved Ohio Administrative Code (OAC) Rule 3745-31, permit to install regulations, as part of the federally enforceable SIP for Ohio. 45 Fed. Reg. 72146.

7. Section 502(a) of the Act, 42 U.S.C. § 7661(a), requires a major source to operate with a permit issued pursuant to an approved 40 C.F.R. Part 70 ("Title V") operating permit program.

8. The State of Ohio Title V operating permit program found at OAC 3745-77 was granted approval by U.S. EPA on August 15, 1995, with an effective date of October 1, 1995. 60 Fed. Reg. 42045.

9. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's potential to emit, are enforceable by the U.S. EPA under the Act.

10. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of any requirement of a SIP

or a federally-enforceable permit that occurred between January 31, 1997 and March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

11. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

12. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

13. The Administrator may assess a penalty greater than \$220,000, under Section 113(d)(1), where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action.

14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000, is appropriate for an administrative penalty action.

**General Allegations**

15. Degussa Engineered Carbons, LP was created to implement a joint venture between Degussa Corporation and Engineered Carbons, Inc. on April 4, 2002.

16. Degussa has owned and operated a carbon black facility at 11135 State Route 7 in Belpre, Ohio since April 4, 2002. Prior to this date the facility was owned and operated by Degussa Corporation, a Delaware Corporation doing business in Ohio.

17. Degussa Corporation was issued Permit to Install (PTI) 06-4927 pursuant to OAC Rule 3745-31 on October 24, 1997 for its Belpre, Ohio facility. Degussa Engineered Carbons, LP, became the permittee of this PTI on April 4, 2002.

18. Degussa was issued Title V permit number 06-84-01-0049 from the State of Ohio on December 23, 2002 for its Belpre, Ohio facility. This Title V permit incorporates provisions from PTI 06-4927.

19. Emissions from Degussa's Carbon Black Process Unit #1, Carbon Black Process Unit #2, Unit #1 Dryer, and Unit #2 Dryer are subject to permit to install regulations in the Ohio SIP at OAC 3745-31 and the Ohio Title V permit program at OAC 3745-77 as set out in the Permit to Install and the Title V permit.

20. In the Permit to Install and the Title V permit described in paragraphs 17 and 18, Carbon Black Process Unit #1 was designated emission unit P001, Carbon Black Process Unit #2 was designated emission unit P002, Unit #1 Dryer was designated emission unit P005, and Unit #2 Dryer was designated emission unit P006.

21. Prior to August 21, 2003, PTI 06-4927 and Part III, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 limited sulfur dioxide emissions from Unit P001 to 288.8 lbs/hr.

22. Prior to August 21, 2003, PTI 06-4927 and Part III, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 limited sulfur dioxide emissions from Unit P002 to 255.5 lbs/hr.

23. Prior to August 21, 2003, PTI 06-4927 and Part III, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 limited sulfur dioxide emissions from Unit P005 to 154.1 lbs/hr.

24. Prior to August 21, 2003, PTI 06-4927 and Part III, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 limited sulfur dioxide emissions from Unit P006 to 136.3 lbs/hr.

25. Prior to August 21, 2003, PTI 06-4927 and Part III, Unit P001, Section A(II)(1)(a) of Title V Operating Permit No. 06-84-01-0049 required Degussa to utilize feedstock oil in Unit P001 that contained no more than 2.0 percent sulfur.

26. Prior to August 21, 2003, PTI 06-4927 and Part III, Unit P002, Section A(II)(1)(a) of Title V Operating Permit No. 06-84-01-0049 required Degussa to utilize feedstock oil in Unit P002 that contained no more than 2.0 percent sulfur.

27. Part A(1)(c) of the Additional Special Terms and Conditions of PTI 06-4927, and Part I(A)(1)(c)(ii) of Title V Operating Permit No. 06-84-01-0049 require quarterly reports of deviations from federally enforceable emission limitations.

28. On April 6, 2004, U.S. EPA issued a notice of violation and a finding of violation to Degussa for its alleged violations of the Ohio SIP and Title V permit program, as contained in its

PTI and Title V Permit.

29. On May 13, 2004, U.S. EPA held a conference with Degussa regarding the April 6, 2004 notice of violation and finding of violation.

### **VIOLATIONS**

#### **Count I**

30. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

31. Degussa utilized feedstock oil that contained more than 2.0 percent sulfur in Unit P001 on 322 days from April 4, 2002, to August 21, 2003.

32. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P001, Section A(II)(1)(a) of Title V Operating Permit No. 06-84-01-0049 by utilizing feedstock oil that contained more than 2.0 percent sulfur in Unit P001.

#### **Count II**

33. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

34. Degussa's sulfur dioxide emissions from P001 exceeded 288.8 lbs/hr on 81 days from April 4, 2002, to August 21, 2003.

35. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P001, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 by emitting sulfur dioxide from P001 in excess of 288.8 lbs/hr.

#### **Count III**

36. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.



37. Degussa utilized feedstock oil that contained more than 2.0 percent sulfur in Unit P002 on 309 days from April 4, 2002, to August 21, 2003.

38. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P002, Section A(II)(1)(a) of Title V Operating Permit No. 06-84-01-0049 by utilizing feedstock oil that contained more than 2.0 percent sulfur in Unit P002.

#### Count IV

39. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

40. Degussa's sulfur dioxide emissions from Unit P002 exceeded 255.5 lbs/hr on 47 days from April 4, 2002, to August 21, 2003.

41. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P002, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 by emitting sulfur dioxide from Unit P002 in excess of 255.5 lbs/hr.

#### Count V

42. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

43. Degussa's sulfur dioxide emissions from Unit P005 exceeded 154.1 lbs/hr on 47 days from April 4, 2002, to August 21, 2003.

44. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P005, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 by emitting sulfur dioxide from Unit P005 in excess of 154.1 lbs/hr.

Count VI

45. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

46. Degussa's sulfur dioxide emissions from Unit P006 exceeded 136.3 lbs/hr on 30 days from April 4, 2002, to August 21, 2003.

47. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Unit P006, Section A(I)(1) of Title V Operating Permit No. 06-84-01-0049 by emitting sulfur dioxide from Unit P006 in excess of 136.3 lbs/hr.

Count VII

48. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

49. Degussa failed to submit quarterly deviation (excursion) reports that identify and provide information relating to each hour the sulfur dioxide emission rate was exceeded for the second and third quarters of 2002, and the first three quarters of 2003.

50. Degussa violated OAC Rule 3745-31, PTI 06-4927 and Part III, Units P001 and P002, Section A(IV)(4) and (5), Units P005 and P006, Section A(IV)(4) of Title V Operating Permit No. 06-84-01-0049 by failing to submit quarterly deviation (excursion) reports.

**Proposed Civil Penalty**

51. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

52. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$ 1,549,971. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy).

53. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

54. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules. (Attachment A)

#### **Filing and Service of Documents**

55. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intend as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

56. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized John Tielsch to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone John Tielsch at (312) 353-7447. John Tielsch's address is:

John Tielsch (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

57. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Tielsch and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

58. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator

proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 59 through 64 below.

#### **Answer**

59. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 55, above, and must serve copies of the written answer on the other parties.

60. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

61. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the

allegation is deemed denied.

62. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

63. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 58 above.

64. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

65. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact John Tielsch at the address or phone number specified in paragraph 56, above.

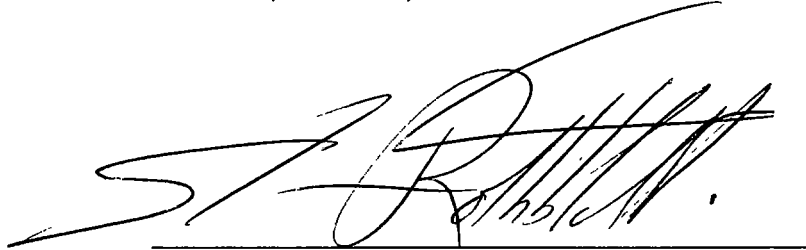
66. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

67. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/24/2004

Date



Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-05-2004 0044

In the Matter of Degussa Engineered Carbons, LP  
Docket No.

~~CAA-05-~~ 2004 0044

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [ ~~CAA-05-~~ 2004 0044 ] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint and copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Degussa Engineered Carbons, L.P.  
c/o Corporation Service Company  
Registered Agent  
2711 Centerville Road Suite 400  
Wilmington, Delaware 19808


William D. Hayes  
Vorys, Sater, Seymour and Pease  
Suite 2000 Atrium Two  
221 E. Fourth Street  
Post Office Box 0235  
Cincinnati, Ohio 45201-0236

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

04 SEP 27 P2:31

RECEIVED  
REGIONAL HEARING  
CLERK

on the 27<sup>th</sup> day of September, 2004.

  
Loretta Shaffer  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5410